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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,585	02/05/2001	E. Stephen Crandall	1999-0735-CIP	9273

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EXAMINER

SHINGLES, KRISTIE D

ART UNIT	PAPER NUMBER
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2441

MAIL DATE	DELIVERY MODE
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02/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	09/775,585	CRANDALL, E. STEPHEN	
	Examiner	Art Unit	
	KRISTIE D. SHINGLES	2441	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/3/08</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Per Applicant's Request for Continued Examination
Claims 39 and 46 have been amended.
Claims 1-38 have been cancelled.

Claims 39-54 are pending.

Continued Examination Under 37 CFR 1.114

I. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/5/2009 has been entered.

Response to Arguments

II. Applicant's arguments with respect to claims 39 and 46 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

III. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 39 and 46 recite the limitation "each performance content class". A "performance content class" has not been previously described or established in the claim, thus there is insufficient antecedent basis for this limitation in the claim.

Claim Objections

IV. Claim 39 is objected to because of the following informalities: "program content" in line 10 should be changed to—*performance content*—for consistency with the other claim language.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

V. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

VI. Claims 39 – 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Beach et al* (US 6,728,713) in view of *Andros et al* (US 5,045,850) in further view of *Greer et al* (US 5,978,828).

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a. Per claims 39 and 46 (differ only by statutory class), *Beach et al* teach the method for receiving performance content over a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the performance content by determining that stored performance content is out-of-date (*col.6 lines 35-56, col.15 lines 4-11*);
- selecting a process for obtaining the needed performance content (*col.7 lines 3-18*);
- executing the process for obtaining the needed performance content (*col.7 lines 15-36*); and
- generating the pseudo-live performance by mixing content corresponding to one or more portions of the needed performance content with other content (*col.12 line 15-col.13 line 6*)
- accessing a time-stamp of the stored performance content (*col.16 lines 55-58*), and
- determining whether the time-stamp of the stored performance content matches the time of the latest update of the stored performance content (*col.11 line 62-col.12 line 2, col.14 lines 45-51, col.16 lines 51-67*).

Yet *Beach et al* fail to explicitly teach wherein each performance content class is determined to be out-of-date differently and determining whether stored program content is out-of-date further comprises: transmitting a query to determine a time of a latest update of the stored performance content, receiving the time of latest update of the stored performance content in response to the transmitting of the query. However *Andros et al* teach that a user in a network may elect to receive updates for different types of content (sports, weather, stocks) at different times, wherein the content is updated at different frequencies according to its type and source (*col.12 line 64-col.13 line 22*). Furthermore, *Greer et al* teach querying to receive update information to determine a time of the last update/modification, accessing the timestamp of the

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webpage object and determining if the stored object has been updated (*col.3 line 64-col.4 line 31, col.5 line 22-col.6 line 25, col.7 lines 35-45, col.8 lines 23-52, col.9 lines 1-10*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Beach et al* with *Andros et al* and *Greer et al* for the purpose of determining that stored data is old or out-of-date by comparing latest update times and time-stamps and updating different types of content at different rate. Time-stamping and maintaining the date and time of content modifications are common techniques used in the art for effectively implementing updates, synchronizing data and keeping track of the current version of stored content in order to keep the stored content up-to-date. Furthermore, it is obvious that different types of network content have different expiration times and therefore require more or less frequent update checking.

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b. Per claim 40, *Beach et al* with *Andros et al* and *Greer et al* teach the method of claim 39, *Beach et al* further teach the method further comprising: accessing a profile wherein the profile indicates one or more of: a type of content desired by an end-user; a schedule of an end-user; and scheduled times at which content is transmitted by a performance transmitter (*col.3 lines 44-48, col.15 line 44-col.16 line 50, col.17 line 16-col.18 line 37*).

c. Claim 47 is substantially similar to claim 40 and is therefore rejected under the same basis.

d. Per claim 41, *Beach et al* with *Andros et al* and *Greer et al* teach the method of claim 39, *Beach et al* further teach the method further comprising determining whether a performance transmitter is of a type that is capable of receiving and responding to a content request, wherein the determining further comprises one or more of: transmitting a query signal to a performance transmitter; passively receiving a signal from the performance transmitter; and accessing a profile (*col.3 lines 44-48, col.15 line 44-col.16 line 50*).

e. Claim 48 is substantially similar to claim 41 and is therefore rejected under the same basis.

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f. Per claim 42, *Beach et al* with *Andros et al* and *Greer et al* teach the method of claim 39, *Beach et al* further teach the method further comprising: generating a content request; and transmitting the request to a performance transmitter via the network (*col.15 line 44-col.16 line 44; Greer et al—col.8 lines 30-52, col.9 lines 1-10*).

g. Claim 49 is substantially similar to claim 42 and is therefore rejected under the same basis.

h. Per claim 43, *Beach et al* with *Andros et al* and *Greer et al* teach the method of claim 39, *Beach et al* further teach wherein the selecting a process comprises determining an appropriate time to receive information from a performance transmitter (*col.16 lines 36-67, col.18 lines 40-67*).

i. Claim 50 is substantially similar to claim 43 and is therefore rejected under the same basis.

j. Per claim 44, *Beach et al* with *Andros et al* and *Greer et al* teach the method of claim 39, *Beach et al* further teach wherein generating the pseudo-live performance comprises: retrieving the other content; decoding one or more commands of the other content; and performing one or more tasks instructed by the commands (*col.15 lines 12-51, col.20 lines 1-34*).

k. Claim 51 is substantially similar to claim 44 and is therefore rejected under the same basis.

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l. Per claim 45, *Beach et al* teach the method of claim 44, wherein the one or more commands includes one or more of programming commands that execute a software program, housekeeping commands that load, delete, change or overlay stored content, and performance commands that reproduce stored content from one or more specified locations of a storage device (*col.11 line 62-col.12 line 2, col.14 lines 45-51, col.16 lines 51-67, col.18 lines 40-61*).

m. Claim 52 is substantially similar to claim 44 and is therefore rejected under the same basis.

n. Per claim 53, *Beach et al* with *Andros et al* and *Greer et al* teach the method of claim 39, *Beach et al* further teach wherein the performance content includes multimedia performance content (*col.17 lines 1-32; Greer et al: col.3 lines 26-39*).

o. Claim 54 is substantially similar to claim 53 and is therefore rejected under the same basis.

Conclusion

VII. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure: Mariani et al (6650348), Shafron (7107548), Elvins et al (6529586), De Bonet et al (6600898), Gebis et al (6993290), Blackwell et al (6449654), Holtz et al (6952221), Toh et al (6128652).

Examiner's Note: Examiner has cited particular columns and line numbers in the reference(s) applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the Applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the cited passages as taught by the prior art or relied upon by the examiner. Should Applicant amend the claims of the claimed invention, it is respectfully requested that Applicant clearly indicate the portion(s) of

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Applicant's specification that support the amended claim language for ascertaining the metes and bounds of Applicant's claimed invention.

VIII. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kristie D. Shingles
Examiner
Art Unit 2441

/KDS/
/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444